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OFFICE OF PETITIONS

In re Application of
Yamagashi et al.
Application No. 09/605733
Filed: 06/28/2000
Attorney Docket Number:
09794353-0013

DECISION ON APPLICATION
FOR PATENT TERM ADJUSTMENT

This is a decision on the "Petition for Reconsideration of the Patent Term Adjustment Under 37 C.F.R. § 1.705(d)", filed October 1, 2007. The petition is properly treated under 37 CFR 1.705(b).

The application for patent term adjustment ("PTA") under 37 CFR 1.705(b) is hereby **GRANTED TO THE EXTENT INDICATED HEREIN**.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is **seven hundred five (705) days**, including 766 days of Office delay. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On June 29, 2007, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is 0 days.

On October 1, 2007, applicant timely submitted the instant application for patent term adjustment[1]. Applicant requests that the Determination of Patent Term Adjustment be corrected from 0 days, as indicated on the Determination of PTA mailed June 29, 2007, to an adjustment of 1667 days.

Applicant requests review of the Determination of Patent Term Adjustment for PTO delay based upon the granting of the petition to withdraw the holding of abandonment. Applicant asserts that the non-final Office action mailed November 12, 2003, was not received by Applicant. Applicant states that a petition to withdraw the holding of abandonment was granted in a Decision mailed April 27, 2006, and the Office action was re-mailed on May 22, 2006, wherein

[1] PALM records show that the Issue Fee payment was received in the Office on October 1, 2007.

this Office re-set the period of reply. Applicant asserts that a timely reply to the office action, mailed May 22, 2006, was filed on August 22, 2006. As such, Applicant asserts that the period of delay of 962 days attributed to Applicant under 37 CFR 1.704(b) is in error and should be canceled.

Applicant does not dispute the period of delay of 61 days attributed to Applicant under 37 CFR 1.704(b), nor does Applicant dispute the period of delay of 766 days attributed to the Office under 37 CFR 1.703(a).

Applicant concludes that the period of delay, based upon the foregoing, should be (766 + 962 – 61) = 1667 days.

A review of Office records confirms that a petition to withdraw the holding of abandonment was granted in a Decision mailed April 27, 2006, and the Office action was re-mailed on May 22, 2006, wherein this Office re-set the period of reply. The reply to the Office action, mailed May 22, 2007, was filed on August 22, 2006.

It is specifically noted that the petition to withdraw the holding of abandonment was filed within two months from the date that it was determined that the application was abandoned. See § 1.704(c)(4).

Applicant's delay is calculated as **sixty-one (61)** days.

On Office Delay

Applicant calculates that PTO delay should include 962 days that were incorrectly attributed to the Applicant. Applicant calculates the patent term adjustment due to Office delay to include the 962 days incorrectly attributed to Applicant. Applicant is advised that removal of the 962 days of applicant delay completes the remedy available to Applicant. Applicant does not receive an additional 962 days of patent term for Office delay. This formulation would amount to Applicant receiving 962 days twice: once when removing the delay from the delay attributed to Applicant, and a second time for adding the delay by attributing the delay to the Office.

Applicant is further advised that the patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Conclusion

The correct patent term adjustment (PTA) under 37 CFR § 1.703(a)(1), and 37 CFR § 1.704(b), at the time of the allowance is seven hundred sixty-six (766) days of Office delay, minus sixty-one (61) days of Applicant delay, or **seven hundred five (705) days**. The Office will adjust the PAIR screen to reflect that the PTA determination at the time of mailing of the present Decision

reflects an adjustment of 705 days. A copy of the updated PAIR screen showing the correct determination is enclosed.

In view thereof, at the time of allowance, the application is entitled to an adjustment of 705 days.

The petition fee of $200.00 has been submitted with the instant petition.

The application is being forwarded to the Publications Division for issuance of a patent.

Telephone inquiries specific to this matter should be directed to Attorney Derek L. Woods at (571) 272-3232.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of Adjustment PAIR Calculations

Day : Thursday
Date: 3/13/2008

PALM INTRANET

Time: 14:48:37

PTA Calculations for Application: 09/605733			
Application Filing Date:	06/28/2000	PTO Delay (PTO):	766
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	1023
Post-Issue Petitions:	0	Total PTA (days):	705
PTO Delay Adjustment:	962		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
60	03/13/2008	ADJUSTMENT OF PTA CALCULATION BY PTO	962		
53	06/29/2007	MAIL NOTICE OF ALLOWANCE			
52	06/26/2007	ISSUE REVISION COMPLETED			
51	06/26/2007	DOCUMENT VERIFICATION			
50	06/26/2007	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
49	06/24/2007	NOTICE OF ALLOWABILITY			
48	04/10/2007	DATE FORWARDED TO EXAMINER			
47	04/09/2007	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
46	04/10/2007	DATE FORWARDED TO EXAMINER			
45	04/09/2007	REQUEST FOR CONTINUED EXAMINATION (RCE)		61	35
44	04/10/2007	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
43	04/09/2007	REQUEST FOR EXTENSION OF TIME - GRANTED			
42	04/09/2007	WORKFLOW - REQUEST FOR RCE - BEGIN			
41	03/21/2007	MAIL EXAMINER INTERVIEW SUMMARY (PTOL - 413)			
40	03/14/2007	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
39	02/13/2007	MAIL ADVISORY ACTION (PTOL - 303)			
38	02/12/2007	ADVISORY ACTION (PTOL-303)			
37	02/07/2007	DATE FORWARDED TO EXAMINER			
36	02/02/2007	AMENDMENT AFTER FINAL REJECTION			
35	11/07/2006	MAIL FINAL REJECTION (PTOL - 326)			
34	11/06/2006	FINAL REJECTION			

33	08/22/2006	NEW OR ADDITIONAL DRAWING FILED			
32	08/29/2006	DATE FORWARDED TO EXAMINER			
31	08/22/2006	RESPONSE AFTER NON-FINAL ACTION		962	14
30	07/08/2006	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
29	05/22/2006	MAIL NOTICE OF RESTARTED RESPONSE PERIOD			
28	05/19/2006	LETTER RESTARTING PERIOD FOR RESPONSE (I.E. LETTER RE: REFERENCES)			
27	05/18/2006	MAIL NOTICE OF RESCINDED ABANDONMENT			
26	05/18/2006	NOTICE OF RESCINDED ABANDONMENT IN TCS			
25	05/18/2006	CASE DOCKETED TO EXAMINER IN GAU			
24	05/16/2006	CORRESPONDENCE ADDRESS CHANGE			
23	04/27/2006	MAIL-PETITION TO REVIVE APPLICATION - GRANTED			
22	04/26/2006	CORRESPONDENCE ADDRESS CHANGE			
21	04/26/2006	CHANGE IN POWER OF ATTORNEY (MAY INCLUDE ASSOCIATE POA)			
20	12/20/2005	PETITION ENTERED			
19	06/10/2004	MAIL ABANDONMENT FOR FAILURE TO RESPOND TO OFFICE ACTION			
18	06/10/2004	ABANDONMENT FOR FAILURE TO RESPOND TO OFFICE ACTION			
17	11/12/2003	MAIL NOTICE OF RESTARTED RESPONSE PERIOD			
15	11/10/2003	LETTER RESTARTING PERIOD FOR RESPONSE (I.E. LETTER RE: REFERENCES)			
14	10/03/2003	MAIL NON-FINAL REJECTION	766		-1
13	09/29/2003	NON-FINAL REJECTION			
12	09/04/2003	CASE DOCKETED TO EXAMINER IN GAU			
11	07/15/2003	CASE DOCKETED TO EXAMINER IN GAU			
10	01/21/2003	CASE DOCKETED TO EXAMINER IN GAU			
9	05/24/2002	CASE DOCKETED TO EXAMINER IN GAU			
8	06/28/2000	REQUEST FOR FOREIGN PRIORITY (PRIORITY PAPERS MAY BE INCLUDED)			
7	01/09/2001	APPLICATION DISPATCHED FROM OIPE			
6	12/18/2000	APPLICATION IS NOW COMPLETE			
5	12/15/2000	CORRESPONDENCE ADDRESS CHANGE			
4	09/27/2000	NOTICE MAILED--APPLICATION INCOMPLETE--			

		FILING DATE ASSIGNED			
3	08/16/2000	CORRESPONDENCE ADDRESS CHANGE			
2	07/19/2000	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	06/28/2000	INITIAL EXAM TEAM NN			

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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